IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 9773 of 2007(S)

OA.899/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:

1.UNION OF INDIA, REP. BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-600 003.

2.CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI-600 003.

3.DIVISIONAL PERSONNEL OFFICER,SOUTHERN RAILWAY, TRIVANDRUM DIVISION, TRIVANDRUM-695 014.

BY ADV. SRI.C.N.RADHAKRISHNAN, SR.PANEL COUNSEL

RESPONDENTS:

1.R.SYAMKUMAR,DIESEL ASSISTANT, CREW BOOKING OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.

2.N.N.GIREESHKUMAR,DIESEL ASSISTANT, CREW BOOKING OFFICE,SOUTHERN RAILWAY, ERNAKULAM JUNCTION, ERNAKULAM SOUTH.

3.A.BIJUKUMAR,DIESEL ASSISTANT, CREW BOOKING OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.

**4.K.H.ASHRAF,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
KOLLAM JUNCTIION, KOLLAM.**

**5.JAMESON P. ISSAC,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
ERNAKULAM JUNCTION, ERNAKULAM.**

**6.C.SUDEV BABU,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
KOLLAM JUNCTION, KOLLAM (RESIGNED FROM
RAILWAY SERVICE WITH EFFECT FROM 27.3.2006)**

**7.P.A.PRASANTH,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
NAGERCOIL JUNCTION, NAGERCOIL.**

**8.SAJI V. MATHEW, DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
KOLLAM JUNCTION, KOLLAM.**

**9.S.J.SREEKANTH,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
KOLLAM JUNCTION, KOLLAM.**

**10.S.BINU,DIESEL ASSISTANT,CREW BOOKING OFFICE,
SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**11.E.SHINIL BABU, DIESEL ASSISTANT,CREW BOOKING
OFFICE, SOUTHERN RAILWAY, ERNAKULAM MARSHALLING
YARD, ERNAKULAM.**

**12.P.PRADEEP,DIESEL ASSISTANT,CREW BOOKING
OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**13.A.ANVAR HUSSAIN,DIESEL ASSISTANT, CREW BOOKING
OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**14.BIJU GEORGE,DIESEL ASSISTANT, CREW BOOKING
OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**15.M.C.GIRISH,DIESEL ASSISTANT, CREW BOOKING
OFFICE, SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**16.V.I.RAJESH, DIESEL ASSISTANT, CREW BOOKING
OFFICE, SOUTHERN RAILWAY, NAGERCOIL JUNCTION,
NAGERCOIL.**

**17.K.G.SANTHOSHKUMAR,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
KOLLAM JUNCTION, KOLLAM.**

**18.G.S.BIJUKUMAR,DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
NAGERCOIL JUNCTION, NAGERCOIL.**

**19.DINNICHEN JOSEPH, DIESEL ASSISTANT,
CREW BOOKING OFFICE, SOUTHERN RAILWAY,
ERNAKULAM JUNCTION, ERNAKULAM.**

**20.S.MANOJKUMAR,DIESEL ASSISTANT (NOW WORKING
AS SR.ASSISTANT LOCO PILOR), CREW BOOKING OFFICE,
SOUTHERN RAILWAY, KOLLAM JUNCTION, KOLLAM.**

**21.REGISTRAR,CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, KALOOR, ERNAKULAM.**

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)No.9773 OF 2007

Dated 22nd March, 2007

JUDGMENT

Koshy,J.

This writ petition is filed challenging Ext.P3 order of the Central Administrative Tribunal. Respondents 1 to 5 and 7 to 20 are working as Diesel Assistants in Trivandrum Division of Southern Railway. After joining Palghat Division, they registered their names for inter-divisional request transfer to Trivandrum Division. They have no right to automatic transfer and when request transfer is made, as per paragraph 312 of the Indian Railway Establishment Manual, Vol.I, they have to join as the junior most persons in the newly joined establishment. All the applicants were transferred. But, some of the respondents were got relieving order little later due to exigencies of service. Considering the facts and circumstances of the case, the Tribunal held that if there is a common order of transfer and if some of the persons who were seniors were not relieved due to exigencies of service, after order of transfer, before their juniors are relieved, their seniority will not be lost. This is only on the facts of the case. The Tribunal in no way stated that IREM norms are incorrect. The Tribunal noted that here there

is only one common transfer order and delay in joining in the new division was not attributable to the applicants, but, totally on account of service exigencies. The Tribunal also held as follows:

> "A few days' delay in relieving due to exigency of service would not affect anybody's seniority in the transferred Division nor would it affect the seniority of the transferee from a different Division. (This is purely a suggestion for the Railways to consider for future purposes and not for the present case).

The Tribunal also noted that practice is also the same. The Tribunal therefore ordered as follows:

> 11. In view of the discussions contained above (save the penultimate paragraph), the O.A. Is allowed. It is declared that the seniority afforded to the applicants under Annexure A-6 is not in conformity with the practice (in the absence of rules to cover this specific type of cases) being followed in various Divisions and consequently, the seniority list in so far as the applicants and the private respondents are concerned, are liable to be quashed and set aside. We order so. The respondents are directed to consider placing the applicants and the private respondents in the order of their inter se seniority in the Palghat Division in the grade of Diesel Assistant irrespective of the date of their joining

> the Trivandrum Division. However, if any promotion had been effected on the basis of the impugned Annexure A-6 seniority, the same shall not be disturbed."

A reading of the impugned order shows that it is only on the facts of this case and we see that there is no patent illegality or perverse finding so as to interfere in a petition under Article 227 of the Constitution of India. However, as requested by the petitioners, we give three months' more time for implementing the order.

The writ petition is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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